

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**v.**

**NIKO DEANDRE DAVIS,**

**Defendant.**

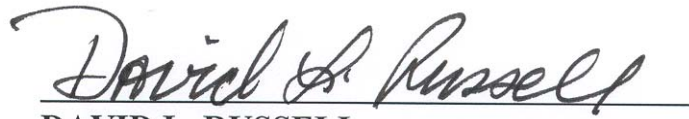
Case No. CR-16-119-R

**ORDER**

Before the Court is Defendant Niko Davis's ("Defendant") "Motion to Vacate Conviction Under Rule 60(B)(3) and (6)." Doc. No. 1805. The Government responded in opposition. Doc. No. 1806. The Court finds as follows.

"Rule 60(b) does not apply to a criminal proceeding." *United States v. Edge*, 315 F. App'x 92, 94-95 (10<sup>th</sup> Cir. 2009) (explaining that the "district court properly recognized Federal Rule of *Civil* Procedure 60(b) has no application to criminal proceedings," but that the district court erred in denying the motion because it should have been dismissed). Because Defendant filed this motion under Fed. R. Civ. P. 60(b) in a *criminal* case, the Court lacks jurisdiction to reach the merits of Defendant's motion. Further, even if this Court construed Defendant's motion as a petition for relief under 28 U.S.C. § 2255, it would be subject to dismissal as a second or successive § 2255 motion without authorization from the Tenth Circuit. *See In re Cline*, 531 F.3d 1249, 1251 (10<sup>th</sup> Cir. 2008). Accordingly, Defendant's motion, Doc. No. 1805, is hereby DISMISSED for lack of jurisdiction.

**IT IS SO ORDERED** on this 9<sup>th</sup> day of June 2021.

  
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**DAVID L. RUSSELL**  
**UNITED STATES DISTRICT JUDGE**